



# Facts and Q&A About the Critical Habitat Designation for Kneeland Prairie Penny-Cress

Critical habitat has been designated for the Kneeland Prairie penny-cress (*Thlaspi californicum*), a perennial in the mustard family that can grow to 6 inches tall. It has white flowers and its fruits (silicles) are pointed at the tip. Flowering occurs from April to June. The species occurs on serpentine outcrops in prairie grasslands of Kneeland Prairie, Humboldt County, California, primarily on private land.

Approximately 9,000 plants are distributed in five colonies. The colonies occupy less than one acre in one general location. The population is threatened with habitat loss due to construction, maintenance, or development activities, hydrologic changes, and other ground-disturbing activities. The species was listed as endangered on February 9, 2000.

Because of its small population and limited area in which it can grow, the Kneeland Prairie penny-cress is vulnerable to extinction.

Native plants such as the Kneeland Prairie penny-cress are important for their ecological, economic, and aesthetic values. Plants play an important role in development of crops that resist disease, insects, and drought. At least 25 percent of prescription drugs contain ingredients derived from plant compounds.

## **Q. What is critical habitat?**

A. Critical habitat is defined as specific occupied and unoccupied areas that have been found to be essential to the conservation of a federally listed species, and which may require special management considerations or protection. Critical habitat is identified using the best available scientific and commercial information about the physical and biological needs of the species. These needs include:

- C Space for individual and population growth, and for normal behavior;
- C Food, water, light, air, minerals or other nutritional or physiological needs;
- C Cover or shelter;
- C Sites for breeding, reproduction, and rearing of offspring; and,
- C Habitat that is protected from disturbance or is representative of the historical geographic, and ecological distribution of a species.

## **Q. What lands are included in this designation?**

A. The Service is designating about 74 acres in Humboldt County near the Kneeland Airport. Private land accounts for about 84 percent while State lands make up 5 percent. County lands comprise 11

percent. There are no federal lands designated as critical habitat.

**Q. Do listed species in critical habitat areas receive more protection?**

A. An area designated as critical habitat is not a refuge or special conservation area. Listed species are protected by the Endangered Species Act (Act) whether or not they are in an area designated as critical habitat.

**Q. What protection does the Kneeland Prairie penny-cress currently receive as a listed species?**

A. The Act forbids the import, export, or interstate or foreign sale of protected animals and plants without a special permit. The Act does not prohibit “take” of listed plants on private lands, but landowners must comply with State laws protecting imperiled plants. Section 7 of the Act requires Federal agencies to consult with the Service on actions they authorize, fund, or carry out that may affect a listed species or its critical habitat. In addition, the Act requires that Federal agencies not only take action to prevent further loss of a species, but also pursue actions to recover species to the point where they no longer require protection and can be delisted.

**Q. Does the designation of critical habitat create preserves?**

A. No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other special conservation area. It does not allow government or public access to private lands, and will not result in closure of the area to all access or use.

**Q. My private property is located within the designated critical habitat unit for the Kneeland Prairie penny-cress. What happens next?**

A. The designation of critical habitat on privately owned land does not mean the government wants

to acquire or control the land. Activities on private lands that do not require Federal permits, licenses, or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land.

If a landowner needs a Federal permit or receives Federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds would consult with the Service to determine how the action may affect the penny-cress.

**Q. Is all the acreage within the critical habitat unit for the penny-cress considered critical habitat?**

A. While we are designating 74 acres for the Kneeland Prairie penny-cress, not all the areas within these boundaries contain the specific habitat features required by the plants, therefore, not all areas will require Federal agencies to consult with us. We would require consultations only where the physical and biological features necessary for the species’ survival exist. For instance, roads or homes within the critical habitat unit boundaries would not be considered critical habitat.

**Q. Does the Kneeland Prairie penny-cress occupy all of the suitable habitat within the critical habitat unit?**

A. No. The known colonies of Kneeland Prairie penny-cress occupy less than one acre of suitable habitat in the critical habitat unit. Under the Act, critical habitat can be designated for an area that does not contain the species if that area provides physical and biological features that are essential to the conservation of the species. This allows a species to repopulate an area that it doesn’t currently inhabit.

**Q. What if populations of the penny-cress are**

**found in the future in areas not designated as critical habitat?**

A. Based on the presence of serpentine outcrops, populations of Kneeland Prairie penny-cress that have not been detected by botanists, may occur outside of the critical habitat unit. This does not mean that habitat outside the designated area is unimportant or may not be required for recovery of the species. If the endangered plants are found outside of critical habitat, federal agencies are required to carry out programs to conserve the plants.

**Q. Because of the critical habitat designation are there any restrictions on my private property ?**

A. Designation of critical habitat in areas occupied by the plant is not likely to result in regulatory burden above that already in place. Activities on your private property within the critical habitat boundary that require a federal permit or license and that may destroy or adversely modify critical habitat will be subject to consultation by the Service. A project that will “destroy or adversely modify” critical habitat is one that will appreciably reduce the value of critical habitat for the survival and recovery of the species.

**Q. Is an economic analysis required as part of designating critical habitat?**

A. Yes. We must take into account the economic impact of identifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits (economic and otherwise) of excluding it outweigh the benefits of including the area as critical habitat, unless the failure to designate the area as critical habitat would result in the extinction of the species. This determination is based on the best scientific, economic and commercial information available. A draft economic analysis was made available for review on May 7, 2002.

**Q. Was an economic analysis prepared when**

**the Service listed the penny-cress?**

A. No. Under the Act, a decision to list a species is made solely on the basis of scientific data and analysis. Critical habitat designation is the only process where economic impacts may be taken into consideration.

**Q. Is critical habitat designated for all listed species?**

A. No. The Service has designated critical habitat for 150 of the 1,249 species currently listed as threatened or endangered. The Act requires us to identify critical habitat at the time a species is listed. However, in some cases, designating critical habitat may be considered “not prudent” if it would cause harm to the species, such as increasing the possibility of collection or vandalism. Or we may find that such a designation is “not determinable” if we don’t have enough information when a species is listed to define areas as critical habitat. On June 17, 2000, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Northern District of California against the Service and the Secretary of the Interior for failure to designate critical habitat for the Kneeland Prairie penny-cress. On May 19, 2000, the court issued a joint stipulation and proposed court order setting the timetable for critical habitat designation. The Service agreed to propose critical habitat for the species by September 30, 2001, and complete the final rule by May 1, 2002. The plaintiffs agreed to an extension for publication of the proposed rule until October 19, 2001. On October 24, 2001, the Service published a proposed rule to designate critical habitat. In mid-April 2002, the plaintiffs agreed to extend the completion date of the final rule until September 30, 2002.

**Q. What about lands where Habitat Conservation Plans (HCPs) are being developed or will be developed in the future?**

A. Critical habitat designation shouldn’t impede

ongoing or future HCP efforts. The long-term conservation of the penny-cress will be addressed as these plans are being developed. At the time the final rule was prepared no HCPs existed that included the penny-cress as a covered species.

**Q. What types of activities might impact critical habitat for the penny-cress?**

A. Activities that may destroy or appreciably reduce the value of critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the plant are appreciably diminished. Activities that negatively impact critical habitat may also jeopardize the continued existence of the species. For the Kneeland Prairie penny-cress, these activities may include, but aren't limited to:

- C Ground disturbance of serpentine outcrops and adjacent areas, including but not limited to grading, and paving;
- C Alteration of serpentine outcrops, including, but not limited to, removal of boulders, mining, and quarrying;
- C Removing, destroying or altering vegetation, including, but not limited to, inappropriately managed livestock grazing, clearing, introducing or encouraging the spread of nonnative species, recreational activities, and maintaining an unnatural fire regime either through fire suppression or frequent and poorly-timed prescribed fires;
- C Hydrologic changes or other activities that alter surface drainage patterns resulting in erosion of serpentine outcrops or adjacent areas, including, but not limited to water diversion, groundwater pumping, irrigation, and erosion control;
- C Construction or maintenance activities that destroy or degrade critical habitat, including, but not limited to road building, building construction, airport expansion,

drilling, and culvert maintenance or installation;

- C Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents.

**Q. How will the designation of critical habitat affect federal agencies that undertake, permit, or fund projects?**

A. Section 7 of the Act requires federal agencies to consult with the Service on actions they authorize, fund or carry out that may affect critical habitat. Through this consultation process, the Service can ensure that permitted actions don't change critical habitat to the degree that it no longer meets the physical and biological needs of the species. The requirement to consult with the Service applies to all lands that have been identified as critical habitat where federal agencies, permits or funding are involved.

**Q. How will the final designation of critical habitat affect activities for which a party has already consulted with the Service under section 7 of the Act?**

A. Federal agencies are required to reinitiate consultation with the Service on previously reviewed actions if critical habitat is designated after the initial consultation, and if those actions may adversely affect critical habitat. This applies only if those agencies have retained some type of involvement or control over the action, or if such involvement is authorized by law.

**Q. What happens if a project is reviewed as part of a reinitiation of consultation and the Service determines it will adversely modify critical habitat?**

A. It is highly unlikely that any activity reviewed by the Service under section 7 of the Act prior to the designation of critical habitat,

will be changed. When reviewing projects under section 7, we must determine if the proposed action will jeopardize the continued existence of a species by asking the question “will the project appreciably reduce the likelihood of the species’ survival and recovery?” Regardless of whether critical habitat has been designated, we must still consider the effect a project may have on the continued existence and recovery of a listed species. In the unlikely event that, through reinitiation, we determine that a proposed action will destroy or adversely modify designated critical habitat, we will work with the involved federal agency and any applicant or permittee to identify alternative ways to implement the project while avoiding adverse modification of the critical habitat. In our experience, alterations are almost always available to both successfully implement the project and protect the species and its critical habitat.

### ***More questions?***

#### **Call or write:**

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